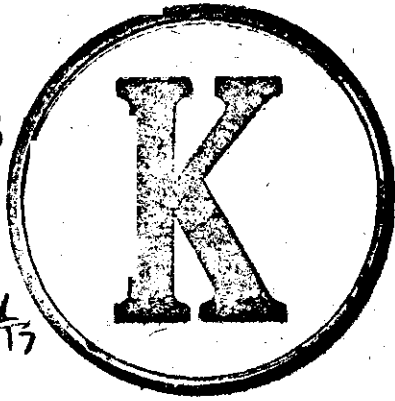


1953



File No. Lg. Expenses.

53

Legal Dept.

C BRANCH

Subject:— Reimbursement of Legal
expenses incurred by Government
servants in defending their official
act.

P-16
E

File No. Lg. Expenses 53

Gen. 194 e.

443-C

Legal Department.

After the case was decided by the Sessions Court at Bombay the matter was considered by the R.L.A. on three points, namely:-

- (1) Whether Government should go in appeal against the decision?
- (2) Whether Government should proceed with the other case against the same accused in which the charges were minor? and
- (3) Whether a departmental inquiry should be held against the accused?

The R.L.A. (Shri Dhurandhar) advised that the case was not fit for an appeal and that for certain reasons the other case be not proceeded with but a departmental inquiry be held. These proposals were approved by H.M. (Law) and H.M. (I.D.).

Subsequently, when the question of departmental inquiry was again specifically taken up Government took the view that no departmental inquiry be held. H.M.(I.D.) in his minute dated 14-9-51 (slip 2) stated that having regard to the long period of suspension and the fact that these accused had been put to considerable expenditure and mental torture by by reasons of the prosecution ~~the~~ no departmental inquiry be held. He ordered that: "They may be reinstated and the period of suspension may be treated as absence on leave without pay or with pay equal to subsistence charges paid so far." This minute was agreed to by C.M. This minute would show that the departmental inquiry was ordered to be dropped not on the ground that the accused were honourably acquitted but on compassionate grounds. The minute also shows that the accused were expected to bear the expenditure they had incurred and also were not to receive full pay

After this P. & S.D. took the view that as no
~~the~~ departmental inquiry was to be held the acquittal must
be deemed to be honourable and that the accused should
be treated as on duty and were entitled to full pay and
allowances for the period of suspension. This view does
not appear to have taken account of the fact that the
departmental inquiry was dropped on the grounds above
stated. The view taken by P. & S.D. was concurred in
by F.D. The matter does not appear to have been placed
before H.M. (H.D.). again, though the payment of full pay
and allowances was not in conformity with the minute of
H.M. (H.D.).

In view of the minute of H.M. (H.D.), dated 14-9-51
it is doubtful whether Government intended to reimburse
these persons any of the expenses incurred by them in
their trial. One of the reasons why a departmental
inquiry was dropped was that they had been put to
considerable expenditure in the trial. If so, Government
would be justified in refusing to reimburse them any
portion of the expenditure. Even under Rule 237(9) of
the Bombay Police Manual each case should be considered
on its merits. Under Rule 236 also Government can on
good ground make exception to the ordinary rule of
reimbursement of reasonable expenses. For ~~x~~ reasons already
stated these cases appear to be ones in which reimbursement
can justifiably be refused.

16/-P.H.LAD.

Secretary to Government.

U.O. to H.M., No. 401/Conf., dated the 13th April 1953.

~~SECRET~~

RB.
27.7.

Submitted.

This relates to the reimbursement of expenses incurred by Shri Gore, Sub-Inspector of Police, Satara for defence in criminal case No.584.S. of 1951. The H.D. has shown these papers to L.D. before issue of the necessary orders.

2. From Shri Gore's application at pp. 5-7 ante it will be seen that he paid the counsel at the rate of Rs.25/- per day for 15 days of effective hearing. In addition he has also claimed Rs.50/- for diet charges etc. and the T.A. Rs.192/3. The scale of fees for Counsels engaged in the Greater Bombay is Rs.25/- per day of effective hearing if the Commissioner of Police sanctions the defence. Since the case was heard before Presidency Magistrate 15th Court, Kuria, the amount claimed by Shri Gore, is reasonable and may therefore be allowed. The P.S.I. is ~~therefore~~ entitled to T.A. The diet charges have been disallowed by the I.S.P.

3. The papers may be seen and passed on to the

F.D.

Sd/-

22/4.

S.S.

Sd/-

22/4/53.

D.S.(cr.) How is he entitled to T.A.

Sd/-

23/4.

P.T.O.

Submitted with my reply to D.S.'s above
quarry.

Shri Goro was prosecuted not by Government but
by a third party. He acted in the discharge of his duties.
He was on duty and he had to come to Bure all along
from Ghati for this case. It is therefore reasonable
to allow him T.A.

sa/-

23/4.

SS.

sa/-

23/4/53.

D.S. (cr.)

sa/-

23/4/53.

~~SS.~~

RS.

27.7.

Legal Department.

Seen and passed on to the Finance Department.

sd/-

23/4.

Deputy Secretary to Government.

U.R.to F.D.,No.9633/C, dated the 24th April/1953.

RB.
27.7.

Legal Department.

Shri Pandya may be paid counsel's fee at the rate of Rs.40/- per day in the Trial and the Sessions Courts and Rs.75/- per day in the High Court, Bombay, respectively. The Home Department should however ascertain before issue of the orders whether all the dates (34 days in all) mentioned by Shri Pandya were dates of effective hearing. The claim as regards charges on certified copies, typing, stamps, clerical work and travelling etc. (Rs.276/-) is not admissible.

The expenditure so involved will have to be met by the Home Department from the grant at its disposal.

26/-

0/5

For Secretary to Government.

Encl: P.M.

Order No., No.596/C-conf., dated the 9th
May 1953.

R3.

26.11.

L.D.
H.I. No. 10801
4/5/53.

Submitted.

2. Please see H.D. note dated the 1st May 1953, at pp. 9-10 ante. Briefly the facts are as stated below:-

Shri K.U. Shintre, Inspector of Police was prosecuted by Government under section 165, I.P.C. for corruption in the Court of the City Magistrate, P.C., Thana. He was acquitted by the Magistrate. The acquittal was considered honourable and accordingly he was reinstated in service. His suspension was treated as duty and he was given full pay and allowances for the period of suspension. He has now submitted his claim for reimbursement of the expenses incurred by him in defending himself. The H.D. has forwarded the papers to this Deptt. to ~~xxx~~ scrutinise the claim of the officer.

3. The amount claimed by Shri Shintre is Rs.335/- which represents the following expenses:-

(1) Legal expenses already paid	Rs.90/-
(2) Legal expenses to be paid	Rs.700/-
(3) Expenses on journeys by lawyer and witnesses from Bombay to Thana and back.	Rs.90/-
(4) Legal expenses (consultation fees).	Rs.100/-
(5) Expenses on journeys performed by him including Rs. 200/- approximately for obtaining certified copies of documents	Rs.75/-

Rs.335/-
~~xxxxxxxxxxxx~~

Shri Shintre has forwarded receipts for Rs.490/- (vide pp. 27-31 of correspondence section). He is unable to produce receipts in respects of item No.5

P.T.O.

xxx

About item No.2 the pleader has stated in his receipt for Rs.900/- (item No.1) that Rs.700/- are still due from Shri Shintre. The days of effective hearing of the case are 15.

4. (1) If the defence of the Police Officer had been entrusted to the ~~XXX~~ P.P. Thana, he would have been entitled to a fee of Rs.20/- per day as laid down in rule 23 of the L.O.(C. of S.) Rules, 1939. Since there were 15 days of effective hearing the P.P. would have drawn Rs. 300/- as his fees. H.D. recommends a fee of Rs. 50/- per day as in the case of Shri Powar. It may be pointed out that it would not be possible for a man to get a pleader to defend himself on a fee of Rs.20/- per day. It would ^{be quite} ~~be~~ reasonable atleast to allow a fee of Rs. 40/- per day for 15 days. Thus the amount will be Rs.600/- on account of legal expenses. This amount of Rs.600 is as against Rs.1700 claimed for legal expenses.

(2) As regards item (3), Shri Shintre is not entitled to reimbursement of the amount of Rs. 900/- on account of the expenses on the journeys of the lawyer and witnesses.

(3) As regards item (4), the consultation fees are not admissible.

(4) As regards item (5), the expenses incurred by Shri Shintre for journeys and for certified copies of documents are not admissible.

5. If approved the H.D. may be informed that Shri Shintre may be paid counsel's fee at the rate of Rs.40/- per day, which is the double fee normally granted to the public prosecutor in the Sessions Court. The H.D. should however ascertain before issue of the orders whether the dates of effective hearing are correct. The claims as regards expenses for lawyer's journey, consultation fees, journey performed

Contd.....

(Continued from p. 31.)

by Shri Shintre and for obtaining certified ~~copies~~
copies of documents are not admissible.

The expenditure involved will have to be
met by the H.D. from the grant at its disposal.

Sd/-

8/5/53

Suptd.

Sd/-

9/5/53.

D.S. (Criml,

Sd/-

9/5/53

Id/-J.R. DHURANDHAR.

11/5.

RB.

27.7.

LETTER.

From

Shri G. R. Donde, M.Sc.,
Assistant Secretary to the Government of
Bombay, Home Department.

To

The Inspector-General of Police,
State of Bombay.

Subject.- Legal Expenses.

Reimbursement of — to Shri K.U. Shintre
Inspector of Police, District Thana.

No.9384/6-A.

Bombay, 28th January 1954.

Reference correspondence ending with your letter No.46-E
dated the 10th December 1953, on the subject noted above.

2. Sanction is accorded to the payment ~~of~~ of Rs.600/- (Rupee
six hundred only) to Shri K.U. Shintre, Inspector of Police,
District Thana, towards the legal expenses incurred by him for
his defence in the criminal case conducted against him in the
Court of the Sub-Divisional Magistrate, First Class, Thana,
and other Courts.

3.- The expenditure involved should be debited to the head
"29-Police-C-1(a)-Police Proper-Contingencies" and should be
met from the grants sanctioned thereunder in the current
financial year.

4. The three vouchers received with your letter No.46-B,
dated the 25th October 1952, are returned herewith.

G.R. Donde,

Assistant Secretary to the Government of Bombay
Home Department.

No.9384/6-A.

Home Department.

Bombay Castle, 28th January 1954.

copies forwarded with compliments for information to:-

The Deputy Inspector-General of Police, C.I.D. (with
reference to his endorsement No.GB 363, dated the
26th September 1952),

The District Superintendent of Police, Thana, (with refer-
ence to his letter, No.390/SIS, dated the 23rd
August 1952),

The Accountant General, Bombay, (through the Finance
Department),

The Finance Department,
The Legal Department,

Id/- G.R. Donde.

RB.27.7.

Assistant Secretary to the Government of Bombay,
Home Department.

Legal Department.

Shri Shintre may be paid counsel's fee at the rate of Rs. 40 per day which is double the fee normally granted to the Public Prosecutor in the Sessions Court. The Home Department should however ascertain before issue of the orders whether the dates of effective hearing are correct. The claims as regards expenses for lawyer's journey, consultation fees, journeys performed by Shri Shintre and for obtaining certified copies of documents are not admissible.

The expenditure involved will have to be met by the Home Department from the grant at its disposal.

sd/-

13/5

Deputy Secretary to Government.

Through F.D.
U.R. to H.D./No. 11127/C, dated the 14th May 1953.

RB.
27.7.

Legal Assistance
Grant of - to Shri J.B. Mane
Insp. of Police, Central &
Southern Rly., Poona.

Govt. of B'bay
Home Deptt.
Resolution No.3544/7
B.C. June 53.

*p.7 c/s in
file below

Read G.R.H.D. No. 3544/7, dt. the 25.4.53.

Resolution: The expenditure referred to in para 3 of the G.R. H.D. No.3544/7, dt. 25-4-53 should be debited to the head "27-Administration of Justice-B- Law Officers - 3.2- Mofussil Estt. - B.2(4) - Contingencies" and should be met from the current year's sanctioned grants thereunder.

By order etc.,

A.S. to the G. Secy of B., H.D.,

To

The I.G.P., S. of B.
The D.I.G.P., C.I.D.
The Supdt. of Police Central & Southern Rlys.
The D.L., W.K.
The D.S.P., J.E.
*The A.G., B'bay (Thr. F.D.)
*The F.D.
*The L.L.

*with u.o. stamp.

Id/-
16.6.53

Id/-
19.6.53.

RB.
27.7.

No.15251/C
Legal Department,
Bombay Castle, (Bombay No.1), 17th July 1953.

To

The Controller,
Government Transport Service,
New Queen's Road, Bombay.

Subject:- Legal assistance
Grant of -- to G.T.S. driver
Shri A.F. Rebello.

Sir,

In returning herewith the bill dated the 18th June 1953 for Rs.195/- on account of fees payable to Shri A.F. Rebello, I am directed to inform you that as Shri Rebello is convicted he is not entitled to any costs incurred by him. (vide rule 189 (9) of Law Officers Rules).

Yours faithfully,

Sd/-.

Assistant Secretary to Government,
Legal Department.

RM.

RB.
27.7.

L.D.
13447Conf1. Dt.5-10-53

Submitted.

Sd/-

5/10.

D.3.(G.L.)

Sari Shide

7/10.

C. Branch (Shri Pradhan,.)

Sd/-

5/10.

Submitted.

1. The facts of the case are briefly as follows:-

In his letter dated the 10th February 1953, addressed to the Chief Minister, one K.S.Padubidri of Karjat had made certain defamatory statements against Shri J.Y.Ranade, I.A.S., Collector of Kolaba. Shri Ranade intends to prosecute Shri Padubidri, provided Government is prepared to bear the expenses of the prosecution, as the allegations made against him are in his official capacity. The R.L.A. has given an opinion (u.o.r. to R.D.No.14869/A, dated 11-7-1953) that a prosecution for an offence of defamation would succeed unless Shri Padubidri is able to bring the case within one of the exceptions to sec. 499 of the Indian Penal Code. The Rev. Legal Deptt. has proposed the grant of legal assistance to Shri Ranade under rule 189 of the Law Officers' Rules. The papers are being shown to the L.D., P. & S.D. and F.D. before the issue of the orders.

2. This Department may agree with the proposal made by the Revenue Department. The cost of the prosecution will have to be debited to the R.L.A's grant (vide rule 189(8) of the L.O.Rd.)

3. If approved the papers may be passed on to the P. & S.D. with the following note:-

"Seen and passed on to the P. & S.D.

2. The cost of the prosecution will be debitable to the R.L.A's grant under : 27-Administration of Justice - B-Law Officers - EE- Haffsail Establishment- B2(4)- Contingencies". The Revenue Department should make this clear in the proposed orders".

Id/-

7-10-53.

S.S.

Id/-

8/10/53

D.S(Cr. Lw)

Id/-

8/10

Adml. Secy.

Id/-

8/10.

Legal Department-

Seen and passed on to the Political and Service Department.

2. The cost of the prosecution will be debitable to the R.L.A's grant under "27-Administration of Justice- B- Law Officers & EE - Haffsail Establishment - B2(4) - Contingencies". The Revenue Department should make this clear in the proposed orders.

Id/-

9/10.

Deputy Secretary to Government,
Legal Department.

U.O.R. to the P.& S.D.No.1282/C-Conf1. 9/10/1953.
Submitted for signature.

S.S.

Id/- 8/10/53.

Id/- 9/10/53.

P.D.(3)

Submitted w.r. to o.n. d/- 3-9-53.

The L.D., P. & S.D. and F.D. have agreed to the R.D. proposal. The draft memo. is suitably modified in view of the L.D., P. & S.D. and F.D. notes. In view of the F.D. note the L.D. may see again and confirm that the expenditure can be accommodated within the sanctioned grants.

Id. Illegible
3-11-53

J.S. Id. Illegible
4-11-53

U.C.M. to L.D. d/- 4-11-1953.

Legal Department.
1578-Conf./9-11-1953.

Seen and returned to the Rev. Deptt.
2. The expenditure can be accommodated within this year's sanctioned grants.

GEB.
9-11-53

DRP.
10-11-53

R.T.K.
10-11

U.Q.R. to R.D. No.1490/C-Conf. d/-11/11/53.

RB.
27.7.

L.D.
25180 dt. 24-10-53.

Submitted.

Id/-

D.S. (Cr.L.)

Shri Pradhan of C. Branch

(1) I have an impression that this case has already
~~xx~~ been considered.

(2) Is the consent of the Legal Department necessary.

Id/- Illegible.
24/10.

Shri Khude
x
24/10.

Submitted with refc. to Dy. Secy's queries.

1. As regards query (1) above - This case is being referred to the Legal Deptt. for the first time. As regards query (2) above - It does not appear that the consent of Legal Department is necessary in this case.

2. Please see H.D. note dated 22-10-53 at pages 1-2 ante. The facts of the case are briefly stated in para 2 thereof. The H.D. has agreed to the grant of legal assistance to the P.Cs. concerned. The pps. are being shown to the L.D. and F.D. before the issue of the orders.

3. In this connection attention is invited to the provisions of rule 236(4) of the Bombay Police Manual, Vol.I, under which the District Magistrate is empowered to sanction the employment of counsel without reference to higher authority or to Government in cases in which (1) the counsel engaged is either (a) the Government pleader ~~maxim~~ in civil cases or the Public Prosecutor in criminal cases, or (b) when the services of the Government Pleader or the Public Prosecutor are not available, any other duly qualified pleader and (2) the fees proposed to be paid to such counsel do not exceed the fees ~~admissible~~ ^{admissible} under

the Law Officers (Conditions of Service) Rules. In the circumstances the District Magistrate, Baroda, himself, without reference to higher authority, can if he is satisfied issue the necessary orders in this case granting legal assistance to the P.Cs. concerned directing the Public Prosecutor to appear on their behalf on the fees admissible under the Law Officers (Conditions of Service) Rules.

4. If approved the papers may be returned to the Home Department as stated in para 3 above.

Id/-
27-10-53.

S.S.
Id/-
27-10-53

D.S. (Cr. Law)
Id/- Id/-
27/10/53.

Legal Department.

In this connection attention is invited to the provisions of rule 236(4) of the Bombay Police Manual, Vol. I, under which the District Magistrate is empowered to sanction the employment of counsel without reference to higher authority or to Government in cases in which (1, the counsel engaged is either (a, the Government Pleader in civil cases or the Public Prosecutor in criminal cases, or (b, when the services of the Government Pleader or the Public Prosecutor are not available any other duly qualified pleader and (2) the fees proposed to be paid to such counsel do not exceed the fees admissible under the Law Officers (Conditions of Service) Rules. In the circumstances the District Magistrate, Baroda, himself, without reference to higher authority can, if he is satisfied, issue the necessary orders in this case granting legal assistance to the P.Cs. concerned directing the Public Prosecutor to appear on their behalf on the fees admissible under the Law Officers (Conditions of Service) Rules.

SD/-
Deputy Secretary to Government,
Legal Department.

Continued....

22942 dt. 8.12.53.

submitted.

2. This relates to the reimbursement of expenses incurred by Sri. Gatre, Sub-Inspector of Police, Petrol for defence in Cr. case No. 5347 of 1951. Sri S.I. has shown these papers to L.D. before issue of necessary orders.

3. From Sri Gatre's application at pp. 3-5 in the correspondence section it will be seen that he paid the counsel at the rate of Rs. 25/- per day for 15 days for effective hearing. The scale of fees for Counsel engaged in the Greater Bombay is Rs. 20/- per day of effective hearing, if the Commr. of Police sanctions the defence (vide r. 4 at p. 133 of Vol. I. G. R. Accts. 7/361). Since the case was heard before Presidency Magistrate 11th Court, Kule, the amount claimed by Sri Gatre is reasonable and may, therefore be allowed. The P.S.I. has not claimed any T.A. or Dist. charges to which he is entitled.

4. Sri Gatre's brother P.S.I. who had also ~~requested~~ requested for reimbursement was allowed the charges and the papers in question were passed on to the P.D. under U.S. No. 2634/C, dated 25.1.53. This may also be seen and passed on to the P.D.

ed/-

10-12-53. On the analogy of P.S.I. Gatre's case the Present claim, made by P.S.I. Gatre for reimbursement of legal expenses, is admissible. The papers may therefore, be seen and passed on to the Finance Department.

P.S.

ed/-

11-12-

D.S (ex. law)

ed/-

11/12/53.

Legal Department.

In the City of Bombay a fee of Rs.25/- per day of effective hearing for appearing in the Presidency Magistrate's Court is considered to be a reasonable fee payable to an Advocate. The case in question was conducted on one day only, i.e. 28th August 1953, as seen from the judgment of the Court. Reimbursement of legal expenses is always understood to be of reasonable expenses only. The G.T.S. driver may, therefore, be reimbursed his legal expenses to the extent of Rs.25/- only. It is presumed that the driver has produced a receipt of the amount alleged to be paid by him to his Advocate.

sd/-

19/10

Deputy Secretary to Government.
Legal Department.

U.O.R. to the Finance Deptt. No.21210/C, d/-26/10/53.

sd/-

RB.

27.7.

Legal Department.

that has particularly to be seen in cases of reimbursement of legal expenses, is not how many advocates were engaged for the defence but what would be the reasonable expenses which Government should reimburse. The criterion observed in such cases is what a District Public Prosecutor would have been entitled to as his fees under the Law Officers (Conditions of Service) Rules had he conducted the defence. In this particular case, had the District Public Prosecutor conducted the defence he would have been entitled to a fee of Rs. 440/- (22 x 20) under rule 23 of the Law Officers (Conditions of Service) Rules. The other expenses amounting to Rs. 40-5-6 also appear to be reasonable. The expenses of Rs. 440/- claimed as fees for the two advocates plus other expenses amounting to Rs. 40-5-6 claimed in this case are, therefore, reasonable.

SD/-

13/11

Deputy Secretary to Government.

U.O.R. to Fin. Deptt. No. 22833/U, d/- 13/11/1953.

snk
31/7RUS
31/7RB.
27.7